

**PART 1615—ENFORCEMENT OF  
NONDISCRIMINATION ON THE  
BASIS OF DISABILITY IN PRO-  
GRAMS OR ACTIVITIES CON-  
DUCTED BY THE EQUAL EMPLOY-  
MENT OPPORTUNITY COMMISS-  
ION AND IN ACCESSIBILITY OF  
COMMISSION ELECTRONIC AND  
INFORMATION TECHNOLOGY**

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AUTHORITY: 29 U.S.C. 794 and 29 U.S.C. 794d(f)(2).

SOURCE: 54 FR 22749, May 26, 1989, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1615 appear at 73 FR 39866, July 11, 2008.

**§ 1615.101 Purpose.**

(a) The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

(b) The purpose of this part is also to effectuate section 508 of the Rehabilitation Act, which requires that when Federal departments and agencies develop, procure, maintain, or use electronic and information technology,

they shall ensure accessibility by individuals with disabilities who are Federal employees or applicants, or members of the public.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39866, July 11, 2008]

**§ 1615.102 Application.**

This part applies to all programs or activities conducted by the Commission and to its development, procurement, maintenance, and use of electronic and information technology.

[73 FR 39866, July 11, 2008]

**§ 1615.103 Definitions.**

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Auxiliary aids useful for persons with impaired ability to reach or grasp include goose neck telephone headsets, mechanical page turners, and raised or lowered furniture. These examples are not intended to be exclusive either as to the persons who are entitled to such aids or as to the type of aids that may be required. Although auxiliary aids are required explicitly only by § 1615.160(a)(1), they may also be necessary to meet other requirements of this part.

*Commission* means the Equal Employment Opportunity Commission.

*Complete complaint* means a written statement that contains the complainant's name and address and describes the Commission's actions in sufficient

detail to inform the Commission of the nature and date of the alleged violation of section 504 or section 508. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

*Electronic and Information technology.* Includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

*Individual with disabilities* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary;

hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having such an impairment* means—(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having an impairment.

*Qualified individual with a disability* means:

(1) With respect to any Commission program or activity (except employment), an individual with a disability who, with or without modifications or aids required by this part, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(2) With respect to employment, a qualified individual with a disability as defined in 29 CFR 1630.2(m), which is made applicable to this part by § 1615.140.

*Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–

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112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

*Section 508* means section 508 of the Rehabilitation Act of 1973, Pub. L. 93-112, Title V, § 508, as added Pub. L. 99-506, Title VI, § 603(a), Oct. 21, 1986, 100 Stat. 1830, and amended Pub. L. 100-630, Title II, § 206(f), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102-569, Title V, § 509(a), Oct. 29, 1992, 106 Stat. 4430; Pub. L. 105-220, Title IV, § 408(b), Aug. 7, 1998, 112 Stat. 1203.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39866, July 11, 2008]

### §§ 1615.104-1615.110 [Reserved]

#### § 1615.111 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Chair of the Commission finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39866, July 11, 2008]

### §§ 1615.112-1615.129 [Reserved]

#### § 1615.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, certi-

fying, or other arrangements, on the basis of disability —

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or

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effect of which would—(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(c) The exclusion of individuals without disabilities from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39866, July 11, 2008]

## §§ 1615.131–1615.134 [Reserved]

### § 1615.135 Electronic and information technology requirements.

(a) Development, procurement, maintenance, or use of electronic and information technology.—When developing, procuring, maintaining, or using electronic and information technology, the Commission shall ensure, unless an undue burden would be imposed on it, that the electronic and information technology allows, regardless of the type of medium of the technology—

(1) Individuals with disabilities who are Commission employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Commission employees who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Commission to have access to and use of information and data that is comparable

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to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(b) Alternative means of access when undue burden is imposed.—When development, procurement, maintenance, or use of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 would impose an undue burden, the Commission shall provide individuals with disabilities covered by this section with the information and data involved by an alternative means of access that allows the individual to use the information and data.

[73 FR 39866, July 11, 2008]

## §§ 1615.136–1615.139 [Reserved]

### § 1615.140 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by this Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities. As noted in 29 CFR 1614.203(b), the standards used to determine whether section 501 of the Rehabilitation Act has been violated in a complaint alleging non-affirmative action employment discrimination under part 1614 shall be the standards applied under Title I and Title V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, 12111, 12201) as such sections relate to employment. These standards are set forth in the Commission's ADA regulations at 29 CFR part 1630. If a section 501 complaint is filed against the Commission in the part 1614 process and it is found to include a separate section 508 claim, the part 1614 process will be used to process the section 501 claim. The section 508 claim will be processed separately in accordance with the procedures set forth at § 1615.170.

[73 FR 39866, July 11, 2008]

§§ 1615.141–1615.148 [Reserved]

**§ 1615.149 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 1615.150, no qualified individual with disabilities shall, because the Commission's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

**§ 1615.150 Program accessibility: Existing facilities.**

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1615.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chair of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39868, July 11, 2008]

**§ 1615.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR subpart 101–19.6, apply to buildings covered by this section.

§§ 1615.152–1615.159 [Reserved]

**§ 1615.160 Communications.**

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with disabilities.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with §1615.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chair of the Commission after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for

reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

[54 FR 22749, May 26, 1989, as amended at 73 FR 39866, July 11, 2008]

§§ 1615.161–1615.169 [Reserved]

§ 1615.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Commission in violation of section 504. This section also applies to all complaints alleging a violation of the agency's responsibility to procure electronic and information technology under section 508 whether filed by members of the public or EEOC employees or applicants.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by EEOC in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). With regard to employee claims concerning agency procurements made in violation of section 508, the procedures set out in paragraphs (d) through (m) of this section shall be used.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Equal Opportunity (Director of OEO).

(d) *Filing a complaint.* (1) Any person who believes that he or she has been subjected to discrimination prohibited by this part or that the agency's procurement of electronic and information technology has violated section 508, or authorized representative of such person, may file a complaint with the Director of OEO. Any person who believes that any specific class of persons has

been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Director. A charge on behalf of a person or member of a class of persons claiming to be aggrieved may be made by any person, agency or organization.

(2) Where and when to file. Complaints shall be filed with the Director of OEO within one hundred and eighty calendar days of the alleged acts of discrimination. A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received in the Office of the Director. The Commission shall extend the time period for filing a complaint upon a showing of good cause. For example, the Commission shall extend this time limit if a complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits. A technically incomplete complaint shall be deemed timely if the complainant cures any defect upon request.

(e) Acceptance of complaint. (1) The Commission shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which it has jurisdiction. The Director, Office of Equal Opportunity shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Director, Office of Equal Opportunity receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Director shall dismiss the complaint without prejudice and shall so inform the complainant.

(f) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Commission shall notify the Architectural and Transportation Bar-

riers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with disabilities.

(h) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(i) Appeals of the findings of fact and conclusions of law or remedies must be filed with the Chair of the Commission by the complainant within ninety calendar days of receipt from the Commission of the letter required by §1615.170(h). The Commission shall extend this time for good cause when a complainant shows that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Chair at EEOC headquarters. It should be clearly marked "Appeal of section 504 decision" or "Appeal of section 508 decision" and should contain specific objections explaining why the person believes the initial decision was factually or legally wrong. Attached to the appeal letter should be a copy of the initial decision being appealed.

(j) Timely appeals shall be decided by the Chair of the Commission unless the Commission determines that an appeal raises a policy issue which should be addressed by the full Commission.

(1) The Chair will draft a decision within 30 days of receipt of an appeal and circulate it to the Commission.

(2) If a Commissioner believes an appeal raises a policy issue that should be addressed by the full Commission, he or she shall so inform the Chair by notice in writing within ten calendar days of the circulation of the draft decision on appeal.

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(3) If the Chair does not receive such written notice, the decision on appeal shall be issued.

(4) If the Chair receives written notice as described in subparagraph (2), the Commission shall resolve the appeal through a vote.

(k) The Commission shall notify the complainant of the results of the appeal within ninety calendar days of the receipt of the appeal from the complainant. If the Commission determines that it needs additional information from the complainant, it shall have sixty days from the date it receives the additional information to make its determination on the appeal.

(l) The time limits cited in paragraphs (h) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, or may contract with non-Federal entities to conduct such investigations except that the authority for making the final determination may not be delegated.

(n) Civil actions. The remedies, procedures, and rights set forth in sections 505(a)(2) and 505(b) of the Rehabilitation Act, 29 U.S.C. 794a(a)(2) and 794a(b) shall be the remedies, procedures, and rights available to any individual with a disability filing a complaint under this section.

[54 FR 22749, May 26, 1989, as amended at 71 FR 26830, May 9, 2006; 73 FR 39868, July 11, 2008]

EDITORIAL NOTE: At 74 FR 3430, Jan. 21, 2009, §1615.170 was amended by removing the text “1801 ‘L’ Street NW.” and adding, in its place, the text “131 M Street, NE.” in paragraphs (d)(2) and (i); however, the amendment could not be incorporated because the text does not exist .

## §§ 1615.171–1615.999 [Reserved]

### PART 1620—THE EQUAL PAY ACT

Sec.

1620.1 Basic applicability of the Equal Pay Act.

1620.2 General coverage of employees “engaged in commerce.”

1620.3 General coverage of employees “engaged in \* \* \* the production of goods for commerce.”

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1620.4 “Closely related” and “directly essential” activities.

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1620.34 Rules to be liberally construed.

AUTHORITY: Sec. 1–19, 52 Stat. 1060, as amended; sec. 10, 61 Stat. 84; Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201 *et seq.*); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12144, 44 FR 37193.

SOURCE: 51 FR 29819, Aug. 20, 1986, unless otherwise noted.

### § 1620.1 Basic applicability of the Equal Pay Act.

(a) Since the Equal Pay Act, 29 U.S.C. 206(d) (hereinafter referred to as the EPA), is a part of the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* (hereinafter referred to as the FLSA), it has the same basic coverage as the FLSA with two principal exceptions: